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In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 9

ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY, appellant

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINION BELOW

The opinion of the specially constituted District Court is incorporated in its final decree (R. 339–341) and is not reported. The report of the Interstate Commerce Commission (R. 27–61) is reported in 201 I. C. C. 645.

JURISDICTION

The final decree of the District Court was entered December 14, 1934 (R. 339). Petition for

appeal was filed February 11, 1935 (R. 342) and allowed on the same day (R. 346). The jurisdiction of this Court rests on the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219, 220 (U. S. C., Title 28, Sec. 47, and U. S. C., Sup. VII, Title 28, Sec. 47a), and Sec. 238 of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C., Sup. VII, Title 28, Sec. 345).

QUESTIONS PRESENTED

The questions presented are:

(1) *Appellant's standing to object.*—Whether appellant has any standing to object to the construction which the Interstate Commerce Commission has placed upon a condition (respecting accounting entries) attached to an order, granting appellant authority to issue stock pursuant to a plan of reorganization, where appellant with knowledge that the Commission so construed the condition, accepted the benefits of the order by fully executing the transactions which it permitted, without disputing the authority of the Commission to impose the condition.

(2) *Propriety of Commission's construction of condition and accounting rules.*—Whether the Commission in issuing an order prescribing the maximum amounts which appellant might record in its balance sheet for "Capital Stock" and for "Investment in Road and Equipment" properly construed its applicable accounting rules and a con-

dition requiring compliance therewith, which the Commission had attached to a prior order granting appellant authority to issue stock.

(3) *Sufficiency of the evidence, even on appellant's construction.*—Whether, if the fair cash value of the railroad properties which appellant acquired under a plan of reorganization is material to a determination of the proper entries to be made in the foregoing accounts, the Commission's finding that such cash value did not exceed a designated amount is supported by substantial evidence.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix, *infra*, pp. 52–57.

The provisions of the Act, pursuant to which the orders of the Commission here involved were issued, may be briefly summarized as follows: Sections 20a (2) and (3) make it "unlawful for any carrier to issue any share of capital stock" except upon an order of the Commission authorizing such issue after application and investigation and upon findings of public interest and necessity and empower the Commission to grant or deny such applications in whole or in part or to grant them "with such modifications and upon such terms and conditions as the Commission may deem necessary or appropriate in the premises." Sections 20 (1) and (5) authorize the Commission "to prescribe * * * a uniform sytem of ac-

counts, * * * the manner in which such accounts shall be kept", and "the forms of any and all accounts."

STATEMENT

This is an appeal from a decree of the District Court for the Northern District of Georgia dismissing appellant's bill of complaint in an action brought to enjoin and annul an order of the Interstate Commerce Commission prescribing the maximum amounts at which appellant might record in its balance sheet its liability for no-par common stock and its investment in road and equipment. An earlier proceeding before the Commission growing out of the same controversy was involved in *United States* v. *Atlanta, B. & C. R. Co.*, 282 U. S. 522, and the opinion in that case contains a brief description of the facts prior to the proceeding before the Commission which led to the order now under attack.[1]

The appellant in January 1927 acquired title to the property formerly owned by Atlanta, Birming-

[1] By stipulation (R. 330–333) substantial portions of the record before this Court in the earlier case were made part of the evidence in the proceeding before the Commission which led to the present report and order. The entire record of the earlier case was in evidence in the District Court and is part of the record now before this Court (R. 350), but only certain portions (R. 73–155, 356–357) are included in the printed record. For convenience, where reference is made to any part of the record in the earlier case which is not reprinted in the present record, the reference will be made as follows: Ex-R.

ham & Atlantic Railway Company (hereinafter called A. B. & A.), as a result of a reorganization of the latter company which was effected pursuant to an agreement made on February 23, 1926, between committees of the bondholders of A. B. & A. and the Atlantic Coast Line Railroad (R. 30–31, 73–83, 4–5). This property had throughout nearly its entire history been involved in financial difficulties and it "had been peculiarly disastrous to investors." *United States* v. *Atlanta, B. & C. R. Co., supra,* p. 524.

Appellant's predecessor, A. B. & A., had become owner of the road in 1915 under a reorganization following a receivership dating from 1909, during which the property had been operated at a deficit. (R. 30; Ex–R. 176–177; see *Valuation of Atlanta, Birmingham & Atlantic R. R. Co.*, 75 I. C. C. 645, 647, 701, 706.) In the 1915 reorganization $35,000,000 in stock and $14,500,000 in bonds were wiped out (Ex–R. 177), and A. B. & A. took the property subject to an old mortgage of $4,090,000, issued approximately $4,500,000 of new income bonds (to the holders of receivers' certificates), and issued and sold 300,000 shares (par value $30,000,000) of stock to the public for $8,600,000 (R. 30, 245–246; Ex–R. 164, 177). Including the old mortgage, the actual investment in the road at this time was consequently only some $12,190,000 (R. 30, 245–246).

In 1921 the road was again placed in receivership (R. 30; Ex–R. 177). No dividends were ever paid